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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,060	02/04/2004	Kang Sub Yim	AMAT/7034.P1/DSM/LOW K/JW	5473

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EXAMINER	
PADGETT, MARIANNE L	

ART UNIT	PAPER NUMBER
1762	

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/773,060	YIM ET AL.	
	Examiner	Art Unit	
	Marianne L. Padgett	1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 6/13/05, 6/6/05 &3/21/05.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-20 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 6/13/5,6/6/5,3/21/5
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. The 112 problems of the claims have been corrected by amendment

CFR 3.73(b) & the terminal disclaimers for 10/428,374 &10/302,393 have been approved, removing these 2 rejections.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. In the claims, it is still noted that the language "comprising one ring and one or two carbon-carbon double bonds in the ring" (emphasis added) will read on (1+) C=C being present, i.e., 1, 2, 3, or more C=C, as well as 1 or more rings due to the open comprising language, thus the claim language as written is inclusive of hydrocarbons with an aromatic rings(s), etc. Also note that the "mixture comprising..." means that if there are multiple Si precursors only one need be both liner and oxygen free, but other precursors can have any of the excluded features.

4. Claims 1-8 and 17-18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims (1-3, 17, 18 & 20) of copending Application No. 10/302,375. Although the conflicting claims are not identical, they are not patentably distinct from each other because the applications have overlapping ranges of deposition materials, with the (375) as discussed in section 6 of the action mailed 4/14/05. It is noted that the submitted terminal disclaimer did not include this case.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 1-6 and 8 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Grill et al (6,312,793 B1), discussed in section 8 of the action mailed 4/14/05.

As Grill et al (793) teach an oxidizing agent (O_2 or N_2O), the amended specific inclusion of O_2 was already covered by Grill et al (793), as was the inclusion of Si, O & C in the deposited film (claim 1)

6. Claims 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grill et al as applied to claims 1-6 and 8 above, and further in view of Wakizaka et al (6,270,900B1), discussed in section 9 of the action mailed 4/14/05.

7. Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grill et al (793) as applied to claims 1-6 and 8 above, and further in view of Goo et al (6,657,251) or Ross (6,271,146 B1), discussed in section 10 of the action mailed 4/14/05.

Claims 16 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grill et al (793) in view of Wakizaka et al as applied to claims 1-6 & 8-15 above, and further in view of Goo et al or Ross (146), discussed in section 10 of the action mailed 4/14/05.

8. Claims 1-6 & 8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 5, 6, 8, 10-12, 14, 20 and 22-23 of U.S. Patent No. 6,797,643. Although the conflicting claims are not identical, they are not patentably distinct from each other because like in sections 6 & 12 discussed of the action mailed 4/14/05andsection 4 above.

9. Applicant's arguments filed 6/13/05 & discussed above have been fully considered but they are not persuasive.

While applicants' amendments slightly narrow the scope of the independent claims, the do so within the scope of broad limitations already covered by the primary reference.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M L. Padgett whose telephone number is (571) 272-1425. The examiner can normally be reached on Monday-Friday from about 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached at (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. L. P 8/22/05

MARIANNE PADGETT
PRIMARY EXAMINER